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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,608	08/11/2003	Patrick Flynn	ENER-0001-4	2473

22506 7590 02/17/2005

JAGTIANI + GUTTAG
10363-A DEMOCRACY LANE
FAIRFAX, VA 22030

EXAMINER
LANGEL, WAYNE A

ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

4)

Office Action Summary	Application No.	Applicant(s)	
	10/637,608	FLYNN ET AL.	
	Examiner	Art Unit	
	Wayne Langel	1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-4,7-11,15-18,21-27,31-34,37-41 and 45-53* is/are pending in the application.

4a) Of the above claim(s) *15-18,21-27,31-34 and 37-41* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-4,7-11 and 45-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-4, 7-11 and 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2645622. It would be obvious to employ a selenium compound as the odorous compound in the process of FR 2645622.

Claims 45 and 46 rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2645622 as applied to claim 2 above, and further in view of applicant's admitted prior art. It would be further obvious from applicant's admitted prior art (paragraghs [03] and [04]) to employ the process of FR 2645622 for dispensing hydrogen to a vehicle fuel cell.

Applicant's argument, that French '622 only describes the use of mercaptan and thiophane odorants which are both sulfur compounds, is not convincing, since Frenh '622 suggests that any odorous gaseous product may be added. Applicant's argument, that selenium compounds are patentably distinct from sulfur compounds, is not convincing. The fact that selenium compounds are patentably distinct from sulfur compounds does not derogate from the fact that French '622 suggests that any odorous compound may be added. Applicant's argument, that the Office Action has not identified any reference that teaches or suggests criteria for choosing an odorant to be used in place of the mercaptan odorant of French '622, is not convincing, since one of ordinary skill in the art could determine which gaseous compounds are odorous by smelling

them. Applicant's argument, that "obvious to try" has long been held not to constitute obviousness, is not germane, since the rejection is predicated on the rationale that it would be "obvious to do", and not "obvious to try". Obviousness wopuld not require absolute predictability as to whether or not selenium compounds would function as the odorous compound in the process of French '622.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Wayne Langel at telephone number 571-272-1353.

Wayne A. Langel

Wayne Langel
Primary Examiner
Art Unit 1754